

REMARKS

Claims 1-20 are pending. Claims 1, 3, 10-12, and 16-17 are amended. Claims 8 and 19-20 are canceled. New claims 21-33 are submitted.

Foreign Priority Claim

Applicants file under separate cover a certified copy of the Great Britain patent application to which priority is claimed.

Claim objection

The Examiner objected to claim 3 for reciting “sizes” instead of “sides”. Applicants have amended claim 3 accordingly.

Claim rejections - 35 U.S.C. § 112, second paragraph

Claims 10-12 were rejected under 35 U.S.C. § 112, second paragraph as being indefinite for reciting “no larger than about”. Applicants have amended the rejected claims by deleting each occurrence of the words “no larger than” before the recited dimension and inserting “or less” after each recited dimension.

Claim rejections - 35 U.S.C. § 102

Claims 1-3, 5, 7, 9, 16-18, and 20 were rejected under 35 U.S.C. § 102(b) as reciting subject matter anticipated by U.S. Pat. No. 5,889,585 to Markart.

Claims 1 and 4 were rejected under 35 U.S.C. § 102(e) as reciting subject matter anticipated by U.S. Pat. No. 6,825,918 to Eisenmann et al.

Claims 1 and 6 were rejected under 35 U.S.C. § 102(b) as reciting subject matter anticipated by U.S. Pat. No. 6,055,060 to Bolduan et al.

The rejections of claims 1-3, 5, 6, 7, 17-18, and 20 are moot because Applicants have:

- amended claim 1 to include the features of now-canceled claim 8, which the Examiner indicated was allowable;
- amended claim 17 to include the features of now-canceled claim 19, which the Examiner indicated was allowable; and
- canceled claim 20.

Applicants ask the Examiner to reconsider the rejection of claim 16, which has been amended to require a first photodetector which detects light emanating from first and second zones of a test strip, and a second photodetector which detects light emanating from the second and third zones of the test strip. Markart does not disclose such a structure.

35 USC 102(f) and/or (g) Issues

The Examiner stated that claims 1-2, 4-6, 9-13, and 15-20 are directed to the “same invention” as that of claims 1, 3-6, 9-12, 14, and 16-17 of commonly-assigned application number 10/742,459, and that claim 14 is directed to the “same invention” as that of claims 1, 4, and 5 of commonly-assignment application number 10/741,416, which currently lists an inventorship different from that of the present application.

Inventor Stephen P. Sharrock was inadvertently omitted from the inventorship of the present application, and inventor Andrew P. Phelan was inadvertently omitted from the inventorship of application number 10/742,459. To remedy these unintentional errors, Applicants are filing a request under 37 C.F.R. § 1.48(a) to correct the inventorship of the present application, along with the required statement, declarations, fee, and Assignee

consent. A request to correct inventorship of application number 10/742,459 has already been filed. As a result, all three applications will have the same inventorship.

Applicants submit that the correction of inventorship moots the issues of inventorship or priority under 35 U.S.C. § 102 (f) or (g) and accordingly ask that any rejection made be reconsidered and withdrawn. Applicants also point out that the claims of the present application and the claims cited from application 10/742,459 and from application 10/741,416 are not directed to the same invention because their scopes are different from the claims of the present application.

Claim Rejections – 35 U.S.C. § 103(a)

Claims 10-12 were rejected under 35 U.S.C. § 103(a) as reciting subject matter unpatentable over Markart.

This rejection is moot because Applicants have amended claim 1 to include the features of now-canceled claim 8, which the Examiner indicated was allowable.

Claim Rejections - Double Patenting

Claims 1-2, 4-6, 9-13, and 15-20 were provisionally rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3-6, 9-12, 14, and 16-17 of co-pending Application No. 10/742,459.

Claim 14 was provisionally rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 4, and 5 of co-pending Application No. 10/741,416.

In response, Applicant asks the Examiner to withdraw the provisional double patenting rejections if the claims are otherwise in condition for allowance.

For the reasons given above, Applicants ask the Examiner to reconsider and withdraw all objections and rejections.

Respectfully submitted,
FOLEY HOAG LLP

Dated: December 21, 2005
Customer No. 25,181
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, MA 02210
Tel.: (617) 832-1230

/SCOTT E. KAMHOLZ/
Scott E. Kamholz
Reg. No. 48,543
Attorney for Applicants